

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
2 SKYLINE, 10th FLOOR
5203 LEESBURG PIKE
FALLS CHURCH, VIRGINIA 22041
October 23, 1998

SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. WEVA 94-57
Petitioner	:	A. C. No. 46-01968-04121
v.	:	
	:	Blacksville No. 2 Mine
CONSOLIDATION COAL COMPANY,	:	
Respondent	:	

DECISION ON REMAND

Before: Judge Barbour

The Commission has directed me to reconsider whether a violation of 30 C.F.R. ' 75.1101-23(a) was of a significant and substantial nature (AS&S@) (*Consolidation Coal Co.*, 20 FMSRHC __, Docket No. WEVA 94-57 (September 16, 1998)).

FACTS AND PROCEDURAL BACKGROUND

Section 75.1101-23(a) requires an operator to Aadopt a program for the instruction of all miners in the . . . proper evacuation procedures to be followed in the event of an emergency.@ A citation alleging a violation of the standard was issued to Consol by the Secretary's Mine Safety and Health Administration (MSHA) following MSHA's investigation of a March 15, 1993, fire at Consol's Blacksville No. 2 Mine. The fire was in the belt entry, at the belt drive of the 16-M longwall section.

At the time the fire occurred, there were two fire detection systems in the entry: a heat sensor system and a carbon monoxide (ACO@) monitoring system. The CO system was only partially completed in that the last CO sensor of the system and the system's outstation were not installed.

The belt entry was ventilated by two splits of air. The air in one split flowed from the longwall face outby, down the belt entry, until it entered the return at the regulator. The air in the other split flowed from the belt entry transfer point, inby through a box check, over the belt drive, through a second box check, and into the return at the regulator. In terms of ventilation, the working sections potentially affected by the fire were the 16-M and 17-M sections, both of which were inby the fire.

The fire was detected by a miner who was traveling the belt entry. He reported the fire to the person underground who was in charge of the section and to the dispatcher on the surface. Almost immediately thereafter, the heat sensor alarm at the tailpiece activated, confirming the fire, and the person in charge of the section telephoned the 16-M section and informed the longwall miners to assemble at the headgate. The dispatcher contacted the mine foreman and the assistant mine foreman. The superintendent also learned of the fire and directed the mine foreman to take charge of the situation. The mine foreman told the dispatcher to send water cars to the area. In addition, the assistant mine superintendent began to travel toward the site of the fire.

At about the same time as the fire was detected, the 16-M section foreman saw smoke moving toward the regulator in the return. He then saw the person who originally detected the fire and the two men traveled to the box check nearest the belt drive. They entered the belt entry and proceeded to the site of the fire at the belt drive. Water was spraying from the fire suppression system. It had doused the fire, and there were no flames. The 16-M section foreman called the mine superintendent and told him the fire was out.

Meanwhile, the longwall crew assembled as instructed. They discussed the route they would take to evacuate the section. After they decided on the route, a crew member telephoned the foreman who had been placed in charge of the situation. The crew member told the foreman what the miners planned to do. However, the foreman stated the fire was out and that the crew should stay together on the section. As a result, no one on the 16-M section evacuated to an area outby the fire. In addition, no one left the 17-M section.

MSHA investigated and issued an order of withdrawal charging Consol with a violation of section 75.1101-23(a) because of noncompliance with its firefighting and evacuation plan. The Secretary asserted management did not assure that those persons . . . in the affected area be immediately withdrawn outby (Gov. Exh. 6A at 1). The Secretary also asserted that management's failure to immediately withdraw the miners was S&S.

I concluded the Secretary proved a violation of the standard (18 FMSHRC 1189, 1229-31 (July 1996)). I found the company violated both its general duty immediately to withdraw the affected miners of the 16-M and 17-M sections and its specific duty to withdraw the 16-M section miners outby when the fire sensor alarm activated (18 FMSRHC at 1231).

I also found the violation was not S&S. I reasoned the Secretary proved three of the four criteria required by the Commission in *Mathies Coal Co.*, 6 FMSHRC 3, 3-4 (January 1984), but she did not prove there was a reasonable likelihood the hazard contributed to would have resulted in an injury (18 FMSHRC at 1233). Because the fire was extinguished when the company failed to withdraw the miners or was extinguished shortly thereafter, I found it was not likely the fire at the belt would have intensified had normal mining operations continued. Further, even if the fire rekindled as mining operations continued, I found the heat sensors and CO monitors along the belt would have detected the fire and made its rapid extinguishment probable. Thus, any fire was likely to be of short duration and not of major intensity (18 FMSHRC at 1233). Finally, I found

that given the ventilation system, it was not reasonably likely smoke and fumes would have gone to the face of either section. In making this finding, I credited the testimony of Consol's mining consultant (18 FMSHRC at 1234).

The Commission reversed. It held I disregarded the fact the heat sensor system had been turned off after the fire and was not turned on until well after the shift on which the fire occurred. In addition, it held that I failed to address testimony the CO sensor at the regulator was placed at an incorrect location so that it would have failed to detect any fire between the belt drive area and the regulator in by the belt drive. Finally, the Commission found I failed to consider evidence there had been a programming error with the CO sensor located at the belt drive so that there may have been no CO monitoring between March 15 and March 23. Therefore, the Commission instructed me to reconsider whether there was a reasonable likelihood the hazard of rekindling a fire would result in an injury@(*Consolidation Coal Co.*, slip op. 6). The Commission expressly directed my attention to testimony that part of the belt located a short distance out by the belt drive was bubbled and blistered (Tr. 297, 746-747, 876).

S&S

In determining the reasonable likelihood of injury from the hazard of rekindling the fire (*Consolidation Coal Co.*, slip op. 6), it is important to recall the Commission's instruction that an S&S finding must be based on the particular facts surrounding the violation, including the nature of the mine involved@(*Texasgulf, Inc.*, 4 FMSHRC 498, 501 (April 1988) (emphasis added)). Given this directive, I must take into account the facts surrounding the May 15 fire and the nature of the ventilation system at the mine.

First, to establish there was a reasonable likelihood of injury from the hazard of rekindling the fire, the Secretary had to prove it was reasonable likely the fire would have reignited. She failed to do so. The testimony is clear the fire was of short duration and was extinguished minutes after it broke out. The testimony also established the most likely ignition source of the fire was the friction created by the belt slipping over the rollers at the belt drive, which, in turn caused heat that ignited pine boards alongside the belt drive. The resulting fire burned the boards and scorched the belt, causing the belt to bubble and blister.

After the fire was ignited, the belt continued operating for a very short time and then shut down. This is confirmed by the fact the blistered portion of the belt was found no more than 50 feet from the belt drive and by the fact that those in the face area noticed that the belt stopped right before the alarm activated. Shutting down the belt eliminated one of the possible reignition sources, and there is no indication the slippage problem would have recurred when mining resumed because the problem would have been corrected prior to that.

Although it is possible smoldering wood or coal could have been transported in by the belt drive for a short distance before the belt shutdown, the beltline was examined past the point it was reasonable to expect the wood or coal could have traveled and no evidence of any ignition source was detected.¹ Further, miners stayed in the belt drive area for about an hour after the fire was out. They checked coal under the belt near the belt drive to make sure the fire did not restart and I infer they would have detected any indication of the fire restarting in any other nearby area along the belt. For these reasons, I conclude it was not reasonably likely the fire would have rekindled.²

Second, even if the fire had rekindled, the Secretary did not establish it was reasonably likely smoke and fumes would have traveled to the working sections and posed a hazard to the miners. Previously, I noted the inspector agreed that given the mine's ventilation system, smoke and fumes normally would have been carried away from the working sections and out the return. I also credited the testimony of Consol's ventilation expert who ~~A~~persuasively and . . . fully~~@~~ explained that the air pressure differential between the track entry and the belt entry made it very unlikely that smoke ever would have traveled to the faces, barring a fire of major intensity and of up to 10 hours duration (18 FMSHRC at 1233-34). In view of the the fact miners stayed in the area of the belt drive for about an hour after the ignition, and given the fact a rekindled fire would have had to be very close to the belt drive area, I infer that any such fire would have been detected and extinguished long before it gained the intensity and duration necessary to reverse the airflow. Therefore, upon examining the particular facts surround the violation of section 75.1101-23(a), I conclude the violation was not S&S.

That the Secretary's proof has failed is not surprising. Her S&S assertion was ill-founded from its inception. Contrary to the Commission's instruction in *Texasgulf*, the inspector testified he based the finding on ~~A~~facts surrounding other belt fires and other fires in coal mines where persons have not been evacuated,~~@~~ not on facts particular to the May 15 fire and the Blacksville

¹/ Given the brief period that elapsed between the ignition and the shut down of the belt, nothing would have been carried much further than the bubbled and blistered area of the belt.

²/ This finding should not be viewed as contrary to the statement in the initial decision that ~~A~~the fact the fire was extinguished did not mean that potential ignition sources, which could have started a fire, had not been carried in by . . . the fire~~@~~(18 FMSHRC at 1231). The statement describes the viewpoint of miners at the longwall face who were unaware of the source of the fire and of the facts surrounding the fire and its extinguishment.

No. 2 Mine (Tr. 517).

David Barbour
Administrative Law Judge

Distribution:

Robin Rosenbluth, Esq., Office of the Solicitor, U. S. Department of Labor, 4015 Wilson Boulevard, Suite 400, Arlington, VA (Certified Mail)

Stephen D. Williams, Esq., Steptoe and Johnson, P. O. Box 2190, Clarksburg, WV 26392 (Certified Mail)

dcp

. a fire that was not likely to occur since there was no Athat because of the system

The belt had not ignited, rather Straface likened what had happened to the belt as A more like melting,@ and he stated the belt »appeared to have been near something very hot@ (Tr. 869).

[G]iven the ventilation system, it was not reasonably likely that . . . smoke and fumes would have gone to the face of [the sections].

evidence the question was whether the miners on the section had reason to be concerned they were not withdraw.

Se (Tr. flashover. Almost all of the damage caused by the fire consisted of the burned boards which testimony establishes the ignition source of the fire was the belt slipping

There was no evidence of an ignition other than the fire that could have melted the belt, and, therefore, I conclude the portion of the belt that was scorched by the fire traveled out by the fire area at least 30 feet.